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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/295,690	04/21/1999	JEROME A MOUTON JR.	081862.P122	7482

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EXAMINER
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FLEURANTIN, JEAN B

ART UNIT	PAPER NUMBER
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2172

DATE MAILED: 05/05/2004

44

Please find below and/or attached an Office communication concerning this application or proceeding.

7

<b>Office Action Summary</b>	<b>Application No.</b> 09/295,690	<b>Applicant(s)</b> MOUTON ET AL.	
	<b>Examiner</b> Jean B Fleurantin	<b>Art Unit</b> 2172	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 March 2004 RCE.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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### **DETAILED ACTION**

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 8, 2004 has been entered, in which claims 1-17 remain pending for examination.

### ***Remarks***

2. Applicant's arguments, see Paper No. 22, filed 8 March 2004, with respect to the rejection(s) of claims 1-17 under 35 U.S.C. § 103(a) as being unpatentable over US Patent 6,148,329 issued to Meyer (hereinafter "Meyer") have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new grounds of rejection is made in view of U.S. Patent No. 5,586,304 issued to Stupek, Jr. et al. (hereinafter "Stupek").

### **MPEP 2111 Claim Interpretation; Broadest Reasonable Interpretation**

During patent examination, the pending claims must be "given the broadest reasonable interpretation consistent with the specification" Applicant always has the opportunity to amend the claims during prosecution and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. In re Prater, 162 USPQ 541,550-51 (CCPA 1969). The court found that applicant was advocating ... the

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impermissible importation of subject matter from the specification into the claim. See also *In re Morris*, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997) (The court held that the PTO is not required, in the course of prosecution, to interpret claims in applications in the same manner as a court would interpret claims in an infringement suit. Rather, the “PTO applies to verbiage of the proposed claims the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definition or otherwise that may be afforded by the written description contained in application’s specification.”).

The broadest reasonable interpretation of the claims must also be consistent with the interpretation that those skilled in the art would reach. In *re Cortright*, 165 F.3d 1353, 1359, 49 USPQ2d 1464, 1468 (Fed. Cir. 1999).

### ***Claim Rejections - 35 U.S.C. § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 6,148,329 issued to Meyer (hereinafter “Meyer”) in view of US Pat. No. 5,586,304 issued to Stupek, Jr. et al. (hereinafter “Stupek”).

As per claims 1 and 5, Meyer discloses a method, “updating a message from a first version to an upgraded version by chaining through intermediate versions” as a means for determining whether a stored message is formatted in accordance with a current message, (see col. 2, lines 40-47), wherein update comprises:

“receiving an update message having a first version format” as a means for redelivering the stored message is to update the format of the message to the current format, (see col. 2, lines 45-47); further, in column 3, lines 4-11, Meyer discloses retrieving a first message from the mailbox or folder ordered by version number, in which determining whether redelivery is a being specifically requested or forced by the mail administrator if redelivery is being forced setting the message version to a number which is different from a current version. Meyer does not explicitly disclose repeatedly generating a revised update message having a next most recent version format based on the update message until a final update message having an upgraded version format is generated. However, Stupek discloses a method for use in upgrading a resource of a computer from an existing version of the resource to a later version of the resource, (see col. 1, lines 56 to col. 2, line 41). Further, in column 9, line 1 to column 10, line 6, Stupek discloses the upgrade installer builds the selected upgrade packages and installation instructions into a job, which is transferred into a staging area, an agent client is then notified that a job has been placed in the staging area and the agent installs the packages in the job according to the installation instructions. It would have been obvious to a person of ordinary in the art at time the invention was made to modify the combined teachings of Meyer and Stupek with repeatedly generating a revised update message having a next most recent version format based on the

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update message until a final update message having an upgraded version format is generated. Such modification would allow the teachings of Meyer to improve the accuracy of the method and apparatus for upgrading a database in a redundant environment by release chaining, and to provide automatically determined the availability of upgrades to resources on a computer system, (see col. 2, lines 42-44).

As per claims 2, 6, 10 and 15, in addition to claim 1, Meyer further discloses, “calling a next most recent version mapping function to map contents of the first update message to generate a second update message”, (see col. 3, lines 6-14).

As per claims 3, 7, 11 and 16 the limitations of the claims 3, 7, 11 and 16 are rejected in the analysis of claim 1, and these claims are rejected on that basis.

As per claims 4, 8, 12 and 17, Meyer discloses, “wherein the set of records for the database in the first version is a complete set of records for the database” as a means for existing messages will preferably be converted to the new format, the need for the conversion is automatically recognized by the message store, (see col. 6, lines 52-54).

As per claim 9, Meyer discloses, “an apparatus for updating a message from a first version to an upgraded version by chaining through intermediate versions” as a means for determining whether a stored message is formatted in accordance with a current message, (see col. 2, lines 40-47) comprising:

“means for receiving an update message having a first version format” as a means for redelivering the stored message is to update the format of the message to the current format, (see col. 2, lines 45-47); further, in column 3, lines 4-11, Meyer discloses retrieving a first message from the mailbox or folder ordered by version number, in which determining whether redelivery is being specifically requested or forced by the mail administrator if redelivery is being forced setting the message version to a number which is different from a current version. Meyer does not explicitly disclose a means for repeatedly generating a revised update message having a next most recent version format based on the update message until a final update message having an upgraded version format is generated. However, Stupek discloses a method for use in upgrading a resource of a computer from an existing version of the resource to a later version of the resource, (see col. 1, lines 56 to col. 2, line 41). Further, in column 9, line 1 to column 10, line 6, Stupek discloses the upgrade installer builds the selected upgrade packages and installation instructions into a job, which is transferred into a staging area, an agent client is then notified that a job has been placed in the staging area and the agent installs the packages in the job according to the installation instructions. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the combined teachings of Meyer and Stupek with means for repeatedly generating a revised update message having a next most recent version format based on the update message until a final update message having an upgraded version format is generated. Such modification would allow the teachings of Meyer to improve the accuracy of the method and apparatus for upgrading a database in a redundant environment by release chaining, and to provide automatically determined the availability of upgrades to resources on a computer system, (see col. 2, lines 42-44).

As per claim 13, Meyer discloses an apparatus comprising:

“a network switching device to receive an update a message from a first version format” as a means for redelivering the stored message is to update the format of the message to the current format, (see col. 2, lines 45-47); further, in column 3, lines 4-11, Meyer discloses retrieving a first message from the mailbox or folder ordered by version number, in which determining whether redelivery is a being specifically requested or forced by the mail administrator if redelivery is being forced setting the message version to a number which is different from a current version; and

“a controller card to update a message from a first version to an upgraded version by chaining through intermediate versions” as a means for determining whether a stored message is formatted in accordance with a current message, (see col. 2, lines 40-47). Meyer does not explicitly disclose the controller card repeatedly generating a revised update message having a next most recent version format based on the update message until a final update message having an upgraded version format is generated. However, Stupek discloses a method for use in upgrading a resource of a computer from an existing version of the resource to a later version of the resource, (see col. 1, lines 56 to col. 2, line 41). Further, in column 9, line 1 to column 10, line 6, Stupek discloses the upgrade installer builds the selected upgrade packages and installation instructions into a job, which is transferred into a staging area, an agent client is then notifies that a job has been placed in the staging area and the agent installs the packages in the job according to the installation instructions. It would have been obvious to a person of ordinary in the art at time the invention was made to modify the combined teachings of Meyer and



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Stupek with repeatedly generating a revised update message having a next most recent version format based on the update message until a final update message having an upgraded version format is generated. Such modification would allow the teachings of Meyer to improve the accuracy of the method and apparatus for upgrading a database in a redundant environment by release chaining, and to provide automatically determined the availability of upgrades to resources on a computer system, (see col. 2, lines 42-44).

As per claim 14, Meyer discloses, “wherein the network switching device receives a first update message” as previously received messages in the database need to be updated to reflect the new and existing attribute definitions, message delivery addresses this need by providing a mechanism whereby the message store deletes the previously captured message attribute information and recreates it as if the messages were just being delivered for the first time, (see figure 1, col. 4, lines 42-49).

***Prior Art***

4. The prior made of record and not relied upon is considered pertinent to applicant’s disclosure.

US Pat. No. 6,549,918 issued to Probert, Jr. et al.

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### CONTACT INFORMATION

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jean B Fleurantin whose telephone number is 703-308-6718. The examiner can normally be reached on 7:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John B Breene can be reached on 703-305-9790. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jean Bolte Fleurantin

April 28, 2004



SHAHID ALAM  
PRIMARY EXAMINER